



North Dakota Children's Medically Fragile Transition Plan for the HCBS Settings Under 1915(c) Waivers- Revised to address Center for Medicare and Medicaid Services (CMS) requirements

Purpose

The Center for Medicare and Medicaid Services (CMS) issued a final rule that became effective on March 17, 2014 and requires states to review and evaluate Home and Community-Based Services (HCBS) settings, including residential and nonresidential settings that are paid for with funding through North Dakota's six Medicaid 1915(c) waivers. States are required to ensure all HCBS settings comply with the new federal requirements to ensure that all individuals receiving HCBS are integrated in and have full access to their communities, including opportunities to engage in community life, work in integrated environments, and control their own personal resources. The ND Department of Human Services (Department) has created a draft Children's Medically Fragile Transition Plan to assess compliance with the HCBS Settings Rule and identify strategies and timelines for coming into compliance with the new rule.

The federal citation for the new rule is 42 CFR 441.301(c) (4)-(5), and more information on the rules can be found on the CMS website at:

www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Home-and-Community-Based-Services/Home-and-Community-Based-Services.html

North Dakota HCBS Background

While North Dakota is the third least populous state, it has the fastest growing population. The U.S. Census Bureau estimates that North Dakota experienced the largest growth in population between 2010 and 2011, increasing by 7.6 percent. North Dakota has five federally recognized tribes within the boundaries of North Dakota which have independent, sovereign relationships with the federal government and territorial reservations.

In 2014, North Dakota was in the middle of an oil boom from the Bakken formation located in western North Dakota. This boom led to job growth and a population

influx, but also caused a rapid increase in housing costs in some areas and a shortage of affordable housing for moderate and low income individuals. The rapid population growth placed increased demand on social service and human service systems.

North Dakota CMFW 1915(c) waivers through its Medicaid program..

- **Children's Medically Fragile Waiver:** The purpose of the waiver for medically fragile children ages 3-18 to provide assistance for families who require long-term supports and services to maintain their medically fragile child in the family home while meeting their child's unique medical needs.

Assessment Process

The Department conducted a review and analysis of all settings where HCBS are provided to eligible recipients to create the initial Statewide Transition Plan.

The Department reviewed North Dakota Century Code, North Dakota Administrative Code, licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements.

Based on this review, the Department identified the settings that:

- a) Fully comply;
- b) With changes, will fully comply;
- c) Presumptively do not comply but North Dakota believes to be community-based (through heightened scrutiny); or
- d) Do not/cannot meet HCB settings requirements

Section 2: Summary of Settings Assessment Results

Table 1: Medically Fragile Waiver

Service	Service Description
<i>Settings for the services listed below are presumed to fully comply with the regulatory requirements because they are setting where individualized services are being provided in the recipient's private home and allow the client full access to community living. Recipients get to choose what service and supports they want to receive and who provides them. Recipients are free to choose to seek employment and work in competitive settings, engage in community life and control their personal resources as they see fit.</i>	
Case Management	Provides a variety of activities such as intake, case planning, on-going monitoring and review of supports, services to promote quality and outcomes and planning for and implementing changes in supports and services for the family / recipient while in their home
Dietary Supplements	Supplements provided up to 51% of recipient nutritional intake or disease specific while the child is in their home
Environmental Modification	Provides assistance in modifying the family home/ vehicle to enhance the eligible child's ability to function as independently as possible in their home
Equipment and Supplies	Provides adaptive items for daily living, environmental control items, personal care items and such to enhance their home for better independence of recipient
In-Home Supports	Enables a child who has a serious medical condition to remain in and be supported in their family home
Individual and Family Counseling	Address needs related to the stress associated with the child's extraordinary medical needs which will support the continued integration of the child in their home
Transportation	Enables individuals to access essential community resources or services in order to maintain themselves in their home
<i>Settings that are not provided within the waiver participant's private residence but are presumed to fully comply.</i>	
Institutional Respite	Provide temporary relief to the recipient's legally responsible caregiver (complies with the setting rules per 42 CFR 441.301(c) (4)-(5))

Section 3: Assessment Results, Proposed Remedial Strategies and Timelines

North Dakota Crosswalk of Systemic Assessment

Medicaid Waiver Children with Medically Fragile Needs

The Department reviewed North Dakota Century Code (NDCC), North Dakota Administrative Code (NDAC), licensing rules and regulations and other policy materials to identify changes necessary to ensure compliance with the HCBS settings requirements. For ND Century Code changes the Department will bring forward the recommended changes to the ND Legislative Assembly in 2017. During this process the public has opportunity to provide comments, either in testimony or written correspondence. For ND Administrative Code, the Department prepares the changes and per the Administrative Rule process, a public hearing is held. Following the hearing a public comment period is also available.

Link to North Dakota Century Code: <http://www.legis.nd.gov/general-information/north-dakota-century-code>

Link to North Dakota Administrative Code: <http://www.legis.nd.gov/agency-rules/north-dakota-administrative-code>

Link to North Dakota Children Medically Fragile Needs Waiver (CMFW) Policy & Procedure Manual: <http://www.nd.gov/dhs/policymanuals/58505/58505.htm>

Please note, for the purpose of the following chart in determining compliance, Non-Compliant is defined as in conflict or preventing from occurring; and Silent is defined as not present, needs enhancements, or further clarification.

Federal Regulation	Compliant, Non-Compliant, Silent in State Standards	Remediation Required for Non-Compliant or Silent Areas	Timelines for Remediation
1. The setting is integrated in and supports full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources,	Compliant ND Century Code 50-24.1-20 CMFW Policy & Procedure Manual 585-05		

and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.			
2. The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Compliant Child must be residing within their home to receive services. CMFW Policy & Procedure Manual 585-05 Eligibility Criteria 585-05-25		
3. Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	Compliant ND Century Code 50-06.2-01 (2) ND Century Code 12.1-20-01 through 12.1-20-07 CMFW Policy & Procedure Manual 585-05		
4. Optimizes but does not regiment, individual initiative, autonomy, and independence in making life choices, including, but not limited to, daily activities, physical environment, and with whom to interact.	Compliant – CMFW Policy & Procedure Manual 585-05 Parent driven program Stated within waiver.		
5. Facilitates individual choice regarding services and supports, and who provides them.	Compliant CMFW Policy & Procedure Manual 585-05 Stated within waiver.		

<p>6. For provider owned or controlled residential settings-The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the State, county, city, or other designated entity. For settings in which landlord tenant laws do not apply, the State must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.</p>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05</p>		
	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05</p>		
<p>7. For provider owned or controlled residential settings – Each individual has privacy in their sleeping or living units: Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors.</p>	<p>Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05</p>		

8. For provider owned or controlled residential settings- Individuals sharing units have a choice of roommates in that setting.	Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05		
9. For provider owned or controlled residential settings - Individuals have the freedom to furnish and decorate their sleeping unit or living units within the lease or other agreement.	Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05		
10. For provider owned or controlled residential settings - Individuals have freedom and support to control their schedules and activities and have access to food any time.	Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05		
11. For provider owned or controlled residential settings - Individuals are able to have visitors of their choosing at any time.	Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05		
12. For provider owned or controlled residential settings -. Setting is physically accessible to the individual.	Compliant Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05		

<p>13. Any modification of the additional conditions must be supported by a specific assessed need and justified in the person-centered service plan. The following requirements must be documented in the person-centered service plan: Specific individualized assessed need; Prior interventions and supports including less intrusive methods; description of condition proportionate to assessed need; ongoing data measuring effectiveness of modification, established time lines for periodic review of modifications; individual's informed consent; and assurance that interventions and supports will not cause harm.</p>	<p>Compliant CMFW Policy & Procedure Manual 585-05</p>		
<p>14. Settings that are not home and community-based are as follows:</p> <ul style="list-style-type: none"> • A nursing facility; • An institution for mental diseases; • An intermediate care facility for individuals with intellectual disabilities; • A hospital; or • Any other locations that have qualities of an 	<p>Compliant – Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05</p>	<p>Requirements will be added to CMFW Policy & Procedure manual 585-05 for clarification.</p>	<p>Aug 2017</p>

institutional setting, as determined by the Secretary.			
<p>15. Settings that are presumed to have the qualities of an institution:</p> <ul style="list-style-type: none"> • any setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment, • any setting that is located in a building on the grounds of, or immediately adjacent to, a public institution, or • any other setting that has the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS. 	<p>Compliant –</p> <p>Waiver participant is a minor and resides within parental home. CMFW Policy & Procedure Manual 585-05</p>	<p>Requirements will be added to CMFW Policy & Procedure manual 585-05 for clarification</p>	<p>August 2017</p>

SECTION 4: ONGOING MONITORING AND COMPLIANCE

North Dakota will use several practices at the recipient, provider, and state level to assure ongoing monitoring and compliance with home and community based setting requirements concerning the Children's Medically Fragile Waiver. Program Manager will ensure at time of application and renewal to waiver services the settings requirements are compliant.

At the recipient level; the current person-centered planning process will be utilized. Program Case Managers will review the service planning process, assure that individual outcomes are being realized, services meet participant's needs, and plans are developed according to needs and preferences. In addition Program Case Managers conduct face to face visits every 90 days in which the Program Case Manager monitors satisfaction with services, plan implementation, health and safety, and provider interactions. The Program Manager, an employee of the State Medicaid agency, is responsible to ensure that the plan contains all the required components and approves the plan once all requirements are met.

Section 5: Public Input Process

Initial Statewide Transition Plan Public Input:

The Department provided opportunity for public comment on the initial Statewide Transition Plan during the 30 day public comment period beginning October 15, 2014 through November 14, 2014. The proposed Statewide Transition Plan was sent to tribal entities and other stakeholders. This plan included the CMFW and no comments were made at that time.

Currently: Public and Tribal comment is being requested from Feb. 12 until 5 p.m. (central time) on March 12, 2016, to be in compliance with the five year renewal of the Children with Medically Fragile Needs Waiver.

Comments will be accepted in the following ways:

Email: DSHCBS@ND.GOV

Phone: 800-755-2604 or 701-328-4602

Fax: 701-328-4875

Mail: North Dakota Department of Human Services
Medical Services Division

Attn: HCBS
600 E. Boulevard Ave., Dept. 325
Bismarck, ND 58505 -0250

View the entire draft applications at www.nd.gov/dhs/info/pubs/medical.html. Copies of the draft applications will also be provided upon request.